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WESTERN DISTRICT OF MICHIGAN  
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CLERK OF COURT  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN

2020 FEB 13 PM 12:48

IN THE CHANCERY COURT  
FOR WILLIAMSON COUNTY, TENNESSEE  
AT FRANKLIN

FILED FOR ENTRY

FAWN [REDACTED] FENTON,

Plaintiff/Wife,

vs.

No. 48419B

JEFFREY RYAN FENTON,

Defendant/Husband.

TRANSCRIPT OF PROCEEDINGS

August 1, 2019

Heard Before: HON. MICHAEL W. BINKLEY, JUDGE

Prepared by:

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Franklin, Tennessee 37069  
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[Signature]

1 APPEARANCES:

2 For the Plaintiff/Wife:

3 Ms. Virginia Lee Story  
4 Attorney at Law  
5 136 Fourth Avenue, South  
6 Franklin, Tennessee 37064

7 For the Defendant/Husband:

8 Mr. Mitchell R. Miller  
9 Mr. Charles M. Duke  
10 Attorneys at Law  
11 1200 Villa Place  
12 Suite 201  
13 Nashville, Tennessee 37212  
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P R O C E E D I N G S

MS. STORY: Your Honor, with your permission what we would like to do is leave the ex parte order of protection in place.

THE COURT: All right.

MS. STORY: That has given relief to these parties not being able to contact each other.

THE COURT: Okay.

MS. STORY: And put as part of that, that she does not contact him, he does not contact her, which the ex parte already has him restrained and enjoined from any contact whatsoever.

THE COURT: All right.

MS. STORY: Because what we don't want to do is have something go down on his record that's going to affect his employability, because he needs to get a job ASAP, so as long as we have the protection, the order of protection under the ex parte, we are good with that.

THE COURT: Okay.

MR. DUKE: Thank you, your Honor.

THE COURT: Any other issues?

MS. STORY: We can move on to the

1 sale of the house.

2 THE COURT: Okay.

3 MS. STORY. This is the situation,  
4 your Honor. These parties have no minor children.  
5 They've been separated since March of 2018. Mrs.  
6 Fenton filed for divorce back in '18, and she was  
7 unable to get Mr. Fenton served. In that period  
8 of time Mr. Fenton was in the marital home, which  
9 is in Sunnyside Drive, 1986 Sunnyside Drive,  
10 Brentwood, Tennessee.

11 We believe that house should sell in  
12 the neighborhood of 414,000 we hope. It's a great  
13 location. People want to get in Brentwood, to get  
14 into Brentwood in that zip code. Those schools  
15 for that kind of price is wonderful. This thing  
16 could sell immediately if you had a good marketer  
17 to get that thing on the market and get it sold.

18 Mr. Fenton and Mrs. Fenton had  
19 agreed last year that they would do that. She  
20 then dropped the divorce. They were going to try  
21 to get it on the market. The problem with the  
22 private realtor is that Mr. Fenton posts these  
23 kind of documents that are -- this is the do not  
24 enter my property, and I'll hand you a copy of  
25 that.

1                   It was made as part of the exhibits  
2                   when we filed for divorce in 2019. Mr. Fenton was  
3                   avoiding service. We hired two different process  
4                   servers to try to go out to the residence, and  
5                   this is what they would encounter. We're  
6                   concerned that if a private realtor was going to  
7                   list this property, that it would just be more  
8                   road blocks.

9                   In 2018, when they made this  
10                  agreement, if she dropped the divorce he would  
11                  agree to put the house on the market. It never  
12                  got on the market. It was he's got to fix this,  
13                  he's got to fix that. It was one excuse after  
14                  another, and here we are sitting a year later,  
15                  and now my client had to file bankruptcy.

16                  She is paying the second mortgage on  
17                  the house. She's paying \$48,000 in credit card  
18                  debt, and this credit card debt is in her name,  
19                  but the genesis of those cards, I have a history  
20                  of the cards where Mr. Fenton would transfer  
21                  balances from his credit cards to a credit card in  
22                  her name, and then she became in a horrible  
23                  financial situation.

24                  She is -- she used to make around  
25                  90,000 a year. Her most recent income is 5800 a

1 month. She is an architect, works for a firm,  
2 and Mr. Fenton was the IT person for the firm,  
3 and he hacked the emails so he lost that job. He  
4 is very intelligent. He has a high school  
5 education, but he is a self-taught computer  
6 genius.

7 And he also has -- or he had a real  
8 estate license. I don't believe that's current.  
9 He had a flip home of rental property in 2016, is  
10 my understanding, but he never filed his tax  
11 return for 2016, when he sold that home, and so  
12 we've got a tax liability from 2-2016, standing  
13 out there.

14 2017, 2018, my client did get the  
15 tax returns filed, but they withheld everything  
16 she paid in because they still haven't filed the  
17 2016 tax return. So we have woes, IRS woes. We  
18 have unsecured credit card debt in excess of  
19 \$48,000. There is a Chapter 13. Because my  
20 client makes \$5800 a month, she can't qualify for  
21 a Chapter 7 bankruptcy.

22 And so what happened in the  
23 bankruptcy proceedings is they allowed her six  
24 months to sell this house. She will have to use  
25 her equity from the house. There should be about

1 120,000 equity. We have asked --

2 THE COURT: Total or just her share?

3 MS. STORY: Total. So my client is  
4 around 80 -- his -- no. If it's 120 hers would be  
5 around 60. Most of hers will go to pay off the  
6 debt.

7 THE COURT: Is the IRS going to be  
8 intercepting this money?

9 MS. STORY: When he gets his -- the  
10 holdup here is the 2016 tax returns because he had  
11 the property that he sold, so I don't know where  
12 he is on getting that information together, but  
13 the IRS is clearly not bankruptable. Once he --

14 Once he files the 2016 tax returns,  
15 I imagine they will take that \$8,000 they're  
16 holding of her money from the -- from her  
17 employment where she pays in her taxes. They will  
18 take that and apply it toward the '16 taxes, no  
19 doubt. So that's --

20 THE COURT: Any possibility she  
21 could be an innocent spouse? I don't know how  
22 that works anymore.

23 MS. STORY: She could probably, but  
24 since they are already holding 8,000 of her money,  
25 at this point, your Honor, she just needs the



1     burden of all the debt off her mentally. She  
2     suffers from narcolepsy and she suffers -- she has  
3     very sleepless nights. She can't -- she has  
4     chronic fatigue.

5                     Her health has declined  
6     considerably. It's a toxic marriage. It's been  
7     unbelievably difficult just dealing with Mr.  
8     Fenton to even get him served. So we continued  
9     this matter from Ms. Brittany Gates who was the  
10    attorney who was first retained to represent him.  
11    We continued it from June 29 until today to give  
12    her a month to work on him, to see if we could get  
13    the house on the market, do something.

14                    We really believe the only thing we  
15    can do, your Honor, is to auction this house. We  
16    got a text on June 15th from Mr. Fenton. Here's a  
17    copy of the text, and he says --

18                    THE COURT: Could this be with  
19    reserve or without reserve?

20                    MS. STORY: I think without reserve,  
21    just let it go. I think a good auctioneer will do  
22    a fabulous job. It's a good flip property. It's  
23    a good -- as I said, in that zip code you can't  
24    hardly find anything for that price. So Mr.  
25    Fenton sent her an email.



1                   Said I will -- text. (Quoted as  
2 read.) "I will stay here until the bank -- until  
3 you, the banks and the police carry me out of  
4 here, while they carry truckloads of junk and  
5 treasures out to the lawn." Then it goes on and  
6 on.

7                   But that is truly what we've dealt  
8 with. So he's going to say that he doesn't have  
9 anyplace to live, and that he has renters. He has  
10 gotten renters in there. Well, we didn't sign a  
11 lease. We never authorized any renters to be in  
12 that house. I think the renters need to go.

13                  THE COURT: Okay.

14                  MS. STORY: So --

15                  THE COURT: Do you know whether or  
16 not they are month to month or if there's a  
17 contract?

18                  MS. STORY: I just got the lease,  
19 and I didn't have a chance to look at it.

20                  THE COURT: Okay.

21                  MS. STORY: I have been told that it  
22 says 90 days to vacate but -- I don't know. He  
23 says --

24                  MR. DUKE: Your Honor, I'm sorry,  
25 but if Mrs. Fenton is going to make comments from

1 the table here, can we go ahead and put her under  
2 oath, please?

3 THE COURT: She won't make any more.

4 MR. DUKE: Thank you, your Honor.

5 MS. STORY: And I don't mind being  
6 under oath whatsoever. So I don't know. Like I  
7 said, I was just handed this lease.

8 THE COURT: Sure.

9 MS. STORY: So I do not know.

10 THE COURT: Okay.

11 MS. STORY: I feel sure we have an  
12 escape clause because my client didn't sign the  
13 lease. She is the owner of the property.

14 THE COURT: Is she the only titled  
15 owner?

16 MS. STORY: Both of them.

17 THE COURT: Okay.

18 MS. STORY: So that is our argument.  
19 I would ask that the exhibit on the note, don't  
20 come on my property, the no trespassing be made an  
21 exhibit to this hearing, and the email or the text  
22 from Mr. Fenton that says I will stay here until  
23 you, the banks and the police carry me out.

24 THE COURT: All right. We'll make  
25 this picture the first exhibit, number one.

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(Exhibit One received into  
evidence to this hearing.)

THE COURT: What about the ...

MS. STORY: The text, yes. I would  
like those texts to be made an exhibit.

THE COURT: The text will be  
accepted into evidence as Exhibit Number Two.

(Exhibit Two received into  
evidence to this hearing.)

MS. STORY: I have the bankruptcy,  
your Honor, that says it has to be sold within  
180 days or goes to foreclosure.

THE COURT: What is the starting  
date of that order?

MS. STORY: She filed in April,  
April 29th.

THE COURT: Okay.

MS. STORY: Well, April 26.

THE COURT: Okay. So when does the  
120 or 80 days start?

MS. STORY: I believe it starts from

1 the confirmation, but I'm not a bankruptcy lawyer,  
2 so I was counting from -- I have talked to the  
3 bankruptcy lawyer to make sure what relief we have  
4 to get.

5 THE COURT: Okay.

6 MS. STORY: And I'm supposed to send  
7 him a copy of this order from this court so that  
8 he can get the Bankruptcy Court to ratify that  
9 order so they're also in -- notified of that  
10 process.

11 THE COURT: What about -- just to  
12 fill in your statement here. I want to get the  
13 whole picture. Have y'all talked about an  
14 auctioneer? I know there are two opposite sides  
15 here. I get that, but have y'all gotten that  
16 far? You probably haven't because you disagree?

17 MS. STORY: Their position is they  
18 want a private realtor to come in.

19 THE COURT: Okay.

20 MS. STORY: I don't mind doing  
21 that, but, quite frankly, your Honor, I would not  
22 recommend any of the realtors I work with because  
23 I think it would be a nightmare. We get emails,  
24 books and books and books from Mr. Fenton all  
25 hours of the night, and I don't even think

1       there's anybody I could send into that situation.

2                   THE COURT:   Not even Ms. Martin?

3       She probably --

4                   MS. STORY:   She could do it.   Mr.  
5       Fenton would have to be put on a really short  
6       leash until -- he could throw kinks in it, and  
7       the other thing we're worried about -- it's what  
8       Mrs. Fenton said -- is even if you got a realtor,  
9       if he had to sign a listing contract within five  
10      days, sell it as is, they're going to --

11                   The buyers are probably going to  
12      want a home inspection.   I don't know if it will  
13      pass a home inspection, and with three people  
14      living here with him, and if he says in that  
15      email, you'll have to carry me out, he says all  
16      my treasures, I don't know what the status that  
17      house is.   It's been since March of -- 18 months,  
18      almost 18.

19                   THE COURT:   The tenants that are in  
20      there now, is it a family or one person?

21                   MS. STORY:   You will have to ask  
22      him.   We don't know.   Let me see if I can tell  
23      from a name.   Jesse Garcia.   I don't know who that  
24      is.

25                   MR. DUKE:   There's another one as



1 well.

2 THE COURT: Okay. All right. Yes,  
3 sir. Well, whoever the lawyer is.

4 MR. MILLER: My name is Mitchell  
5 Miller from the Nashville Bar.

6 THE COURT: Yes, sir, Mr. Miller.  
7 How are you today?

8 MR. MILLER: I'm doing very well.  
9 We have made a lot of progress talking about this  
10 case so far, and my client is essentially coming  
11 down to accept the inevitability that we're going  
12 to need to sell this home to get this divorce  
13 finalized and to move Mrs. Fenton through the  
14 bankruptcy.

15 At this time, however, Mr. Fenton  
16 is not employed although he is looking for  
17 employment. He does have renters in this home,  
18 and I know that Ms. Story has taken issue with  
19 that, but I would also like to tell the court  
20 that this has sort of come about because of the  
21 bankruptcy and Mrs. Fenton stopped the -- you  
22 know, discontinuing her payment on the primary  
23 mortgage happened around the same time.

24 And so Mr. Fenton has tenants in  
25 this home and has what is supplements and provides



1 his ongoing day-to-day costs, although the first  
2 mortgage is not currently being paid.

3 Mr. Fenton did not know that the first mortgage  
4 was not being paid until several months after Mrs.  
5 Fenton stopped paying.

6 So, Judge, we have sort of an issue  
7 here where the wife, by filing bankruptcy, filing  
8 divorce and stopping to pay the first mortgage,  
9 has created the financial crisis that we're now  
10 here to resolve.

11 Obviously, Mrs. Fenton would  
12 contend that my client ran up all the debt, and  
13 we're not necessarily here to determine all of  
14 the marital assets and how to distribute marital  
15 debt and assets conclusively, but my client would  
16 show the court that many of those -- many of those  
17 transactions and I'll say creative financial  
18 decisions were done by agreement, or at least with  
19 the knowledge of the wife.

20 However, for today's purposes we  
21 agree that the home needs to be sold, but Mr.  
22 Fenton's liability to his current tenants needs  
23 to be taken into account. Mr. Fenton's current  
24 financial ability needs to be taken into account,  
25 and we would oppose the motion in terms of an

1 auction, especially to the extent that it  
2 requested an immediate auction.

3 At minimum, Mr. Fenton needs some  
4 degree of time to gather his personal belongings,  
5 give proper notice to his tenants, find  
6 subsequent housing, and most importantly, if he  
7 doesn't have a renter income coming in, have some  
8 transitional time to figure out how to be self-  
9 sustaining in the short run.

10 We're not here on an alimony  
11 pendente lite motion, but we probably should be  
12 soon because --

13 THE COURT: Can I ask you this?

14 MR. MILLER: Yes, sir.

15 THE COURT: One of the biggest  
16 problems I'm bumping up against in trying to make  
17 the best decision here is who's going to control  
18 the husband? Exhibit One and Exhibit Two show  
19 some very disturbing conduct. I know you are not  
20 in charge of trying to control your client all the  
21 time.

22 I do know good lawyers like you  
23 gentlemen on the left side of the table will tell  
24 your clients, if you don't do what I tell you to  
25 do, we're out of here. I don't know how people

1 work any more, but that's the way we used to  
2 practice law. The lawyer is in charge. You can  
3 be nice and sweet, but tell the client what they  
4 need to do.

5 And I don't have any assurance at  
6 this point that his conduct won't continue  
7 thereby delaying this process even more. I know  
8 you can't guarantee his conduct. I know that,  
9 but is there anything you can give me to indicate  
10 that his conduct will not be an issue at all? You  
11 probably can't. If I were in your shoes I would  
12 probably say --

13 MR. MILLER: I can give you no  
14 guarantees.

15 THE COURT: I'm not an insurer of my  
16 client's conduct.

17 MR. MILLER: I will adopt that  
18 statement as Mr. Fenton's -- but, your Honor, I  
19 would indicate that there's been an ex parte order  
20 in place for some time now --

21 THE COURT: Right.

22 MR. MILLER: -- and that Mr. Fenton  
23 has complied with that to the letter, and that we  
24 stipulate he will continue to comply with that to  
25 the letter, and Mrs. Fenton has agreed with that

1 and also agreed, you know, not to have any contact  
2 with him.

3 So we are in a place. We are  
4 coming to the table and starting to realize -- I  
5 say "we" as in my whole team here and Mr. Fenton,  
6 that this is where the rubber is meeting the road,  
7 and this divorce is going to get moving along, and  
8 we're going to have to take this one step at a  
9 time.

10 This is going to have to be done.  
11 So I will tell the court that I am confident that  
12 my client now understands that. We spent many  
13 hours working with him to impress upon him the  
14 realistic difficulties of any divorce and, in  
15 particular, this one.

16 So I think what you are seeing there  
17 is probably something that you've seen a lot  
18 before, where spouses in emotional and financial  
19 crisis are lashing out in irrational, unstable  
20 ways. That is coming to an end, and I can give  
21 the court my best confidence that I believe that  
22 Mr. Fenton is turning a corner on that.

23 He has expressed that to the court  
24 by agreeing with Ms. Story's very generous  
25 proposal to continue the ex parte order rather

1     than go for it on 402. So I do think that there  
2     are some good indicators there. Mr. Fenton just  
3     told me that he is willing to take down all those  
4     troubling signs that Ms. Story mentioned.

5                 We are prepared to entertain any  
6     other limitations and orders that the court would,  
7     you know, would want in that kind of order, but we  
8     do think that because the main asset in this  
9     divorce is this home, which we are essentially  
10    disposing of before there's been any discovery and  
11    any further analysis on this, that we need to  
12    proceed in a way that absolutely maximizes the  
13    total take on this.

14                THE COURT: Under the circumstances.

15                MR. MILLER: Under the  
16    circumstances.

17                THE COURT: That's where the real  
18    issue is here.

19                MR. MILLER: Yes, sir.

20                THE COURT: Can I ask you some more  
21    questions too? Ms. Story may be able to answer  
22    this. The other concern I have is: What kind of  
23    condition is the interior of the home? Have we  
24    seen -- has Ms. Story and her client had an  
25    opportunity to look at the interior to see what it



1 looks like?

2 MR. MILLER: Your Honor, I'm not  
3 sure. There's definitely some clutter, and my  
4 client is willing to get to work today to make  
5 sure that that is done, and in terms of following  
6 recommendations for a realtor, we'll follow all  
7 those recommendations. There may be some  
8 financial limitations about, you know, what  
9 extraordinary efforts can be made.

10 THE COURT: I'm going to think out  
11 loud here for a moment. My tendency is to --  
12 considering all these factors, first of all we're  
13 getting ready to close out the best marketing  
14 months of real estate; however, when we look at  
15 property that is specialty property or property  
16 that is very desirable like Brentwood, that  
17 really doesn't matter like it used to.

18 People, if they want to buy, will  
19 buy. If the right buyer comes along -- and they  
20 do in these desirable neighborhoods -- they'll buy  
21 it.

22 MR. MILLER: Yes, sir.

23 THE COURT: So the next thing is,  
24 looking at the husband's past conduct, which  
25 bothers me, and his interruption of the smooth



1 transition of a sale or auction, I want to get  
2 the highest and best price as everyone does.  
3 It's such a close decision for me.

4 I'm thinking of three options.  
5 Number one, getting a real estate person who is  
6 aggressive, who'll sell the property, and if it  
7 can't be sold within 30 days, auction it. But  
8 what that's going to require, if the interior of  
9 the home looks like trash, I mean, that's going to  
10 cost money to get it in good condition.

11 So I guess the question there is  
12 that no one has an answer, and I don't expect  
13 one. What is the margin of additional equity  
14 that could be obtained to fix the home up and  
15 make it marketable and sold with an aggressive  
16 seller within a month, and is it going to be  
17 worth it to do that financially?

18 MR. MILLER: From my understanding  
19 -- from my understanding an investment of five to  
20 10,000 would yield an additional profit of about  
21 50. That calculus might make sense, but I don't  
22 think that either party has the money to make  
23 that investment even though that may be a rational  
24 decision to make.

25 THE COURT: My tendency is to sell

1     it at auction -- it really is -- for a lot of good  
2     reasons.

3                 MR. MILLER: Your Honor, if I could  
4     add another note about how I've arrived on this  
5     case, especially just a few days before this  
6     hearing ...

7                 THE COURT: Yes, sir.

8                 MR. MILLER: Mr. Fenton contacted  
9     me I would say in February maybe before some of  
10    these things happened, and he wanted to engage  
11    me, but at that time I was working with HCA, and  
12    we developed a rapport -- I couldn't take his  
13    case, but we developed a rapport several months  
14    ago.

15                Although I wasn't able to take his  
16    case, I think that we've connected and we've  
17    established a rapport, and since I've moved back  
18    into private practice he contacted me just last  
19    week. So since this has gotten rolling -- and I  
20    know that there was a divide between he and his  
21    prior counsel -- I do have a strong rapport with  
22    my client.

23                And I would be willing to do  
24    whatever the court would like to try to work with  
25    him and make sure that all phases of this divorce

1 proceed in an orderly and respectful fashion. I  
2 think that we're ready to turn a corner and do  
3 that if the court would allow us that opportunity,  
4 if the court's main concern is how we conduct  
5 ourselves.

6 THE COURT: If the margin of  
7 additional money pales against the cost to get  
8 there, and we know that no one has the money to  
9 get there, that particular option, that's not  
10 going to work, so it looks like to me -- correct  
11 me if I'm wrong, but it look like to me that  
12 trying to get the home fixed up for purposes of  
13 producing a higher return --

14 MR. MILLER: Let me clarify. We're  
15 not proposing further investment to -- we're  
16 proposing an as-is sale, but through a -- on the  
17 market rather than at auction so that -- I mean  
18 without additional --

19 THE COURT: But you have to pay the  
20 realtor, don't you?

21 MS. STORY: I was looking at the  
22 realtors that Ms. Martin would -- or the auction  
23 companies that might be suggested --

24 THE COURT: Right.

25 MS. STORY: -- and there's an

1        auctioneer in Brentwood, First Cumberland  
2        Auctioneers. What they would probably do is go  
3        out and just do an estate sale and sell whatever  
4        treasures are there that he's not going to take  
5        with him. Then they would just sell everything.  
6        We would just sell personal property and the  
7        home.

8                        They do charge six percent. Now a  
9        realtor -- an auctioneer is going to charge the  
10       same amount.

11                      THE COURT: Okay. So that's not  
12       a --

13                      MS. STORY: It's the same, six  
14       percent. They do a pretty good job of getting  
15       advertising out there. You would be surprised  
16       how many people show up on these courthouse  
17       steps.

18                      THE COURT: I see them all the time.

19                      MS. STORY: For auction.

20                      THE COURT: Right. Can I just ask  
21       this question too? I've seen where -- I don't  
22       want it to look like a desperation sale, and y'all  
23       don't either because the hawks will be out there.  
24       But at the same time these auctioneers now are  
25       marketing these sales not as an auction

1 necessarily, but like Ms. Story said, like an  
2 estate sale to kind of disguise the idea that it's  
3 a desperate sale when it --

4 MR. MILLER: If an auction has to be  
5 the way to go we certainly appreciate, you know,  
6 proceeding within some form that appears  
7 respectful and doesn't just result in a basement  
8 price.

9 THE COURT: There are auctioneers  
10 who can do that. They understand that because  
11 that makes their commission a lot higher if they  
12 don't make it look like it's desperate, and  
13 they're doing a good job of that from what I've  
14 seen.

15 MR. MILLER: And, your Honor, if an  
16 auction has to be the way we go, I would still ask  
17 for that auction to be out a ways so that he can  
18 obtain -- if we're talking about 30 days, he can't  
19 both clear the home out and apply for jobs. So  
20 then he's got to sell -- we got to figure out  
21 where his personal property goes, find a storage  
22 unit for that.

23 We've got to kick the tenants out,  
24 which are providing income, so he can't really go  
25 buy a storage unit to keep the stuff he wants to,

1 and since he doesn't have a job, especially in  
2 that time frame, he couldn't turn around with his  
3 current resources and rent the cheapest place in  
4 the county.

5 MS. STORY: What I suggested there,  
6 your Honor, is that let him -- I've asked for the  
7 proceeds be placed in the court from the sale,  
8 but we would say he could have X amount of dollars  
9 toward his equity.

10 THE COURT: Draw on his interest.

11 MS. STORY: That way it would go  
12 towards the division of marital property, but  
13 give him some money to get him a new place to  
14 live.

15 MR. MILLER: Then, your Honor,  
16 that's why time is also very important. If we  
17 did this auction tomorrow and we had that exact  
18 order in place, still wouldn't make much of a  
19 difference because he needs some time to get even  
20 the most, you know -- the most nominal --

21 THE COURT: Let me know what you're  
22 talking about timewise. I know what I'm thinking.

23 MR. MILLER: So another issue is the  
24 liability to current tenants, and that lease puts  
25 90 days.



1 THE COURT: Well, I don't want to  
2 put you in the position of buying a lawsuit --

3 MR. MILLER: That's why we --

4 THE COURT: -- having to pay out  
5 money on that, so Ms. Story, what do you say about  
6 that?

7 MS. STORY: It's a self-made -- it's  
8 a self-made lease --

9 MR. MILLER: Which is fine.

10 MS. STORY: -- that he did, and it  
11 says sale. Under the sales provision that any  
12 time during this lease, if the landlord decides to  
13 sell, if landlord sells this property or places  
14 it up for sale, whether voluntarily or by court  
15 order, or in any way the ownership of this  
16 property or rights to sell this property are  
17 conveyed to another party, whether by foreclosure  
18 or other legal process -- which is going to happen  
19 soon if we don't get it on the auction block  
20 within 30 days or so -- during the term of  
21 tenancy, this tenancy per this agreement, the  
22 assuming owner or controlling party and their  
23 agents and assigns must continue to comply in  
24 full with the terms of this lease.

25 Well, obviously he cannot bind a new

1 owner to comply with this lease, so that is a  
2 voidable contract. There's no way that that  
3 tenant could go after the assuming owning or  
4 controlling party or their agents.

5 MR. MILLER: I would stipulate that  
6 that interpretation is absolutely correct. The  
7 controlling provision is what follows.

8 THE COURT: Right.

9 MR. MILLER: Landlord herein  
10 promises and assures tenant that absolutely under  
11 no circumstances will the tenant be requested or  
12 required to move out within receiving at least,  
13 the very least, 90 days written notice in advance.  
14 That is -- I mean he is boxed himself in here.

15 THE COURT: Yeah.

16 MR. MILLER: The court is going to  
17 give him a lawsuit from two tenants.

18 MS. STORY: I don't even know. Are  
19 they paying?

20 MR. MILLER: Yes.

21 MS. STORY: Do they have -- where  
22 is his -- I don't have an income and expense  
23 statement from him. Has he given them notice?  
24 He's known since March of last year that the house  
25 was going on the market, and he signed the lease

1 in April of this year.

2 I don't -- you took that other lease  
3 so I don't know when the other one was signed, but  
4 this one, March, he signed it March of '19. The  
5 bankruptcy was filed April. He knew this was  
6 coming down the pike. I think this is a ruse to  
7 try to keep you from selling the house, and I'm  
8 sorry that he signed this.

9 THE COURT: How many days -- Ms.  
10 Story, if I decide to auction this house, if I  
11 decide to auction it, how many days do you  
12 suggest?

13 MS. STORY: I would say 30 days.

14 THE COURT: Okay.

15 MS. STORY: Let us within the next  
16 week agree on an auctioneer between the attorneys,  
17 reach out to some of our referrals and see who  
18 they prefer that we use and we get it on -- have a  
19 goal for 30 days.

20 THE COURT: All right. Anything  
21 else by either party?

22 MR. MILLER: Your Honor, if the  
23 court orders an auction I would ask for further  
24 order that proceeds be immediately available, at  
25 least some portion of proceeds be immediately

1 available to Mr. Fenton for his continued --

2 THE COURT: Once the money is placed  
3 in the clerk's office, we'll talk about that. I  
4 know that may be an issue.

5 MS. STORY: If he will just send me  
6 a list of what he, you know, a pro forma of what  
7 he wants, what his budget might be, how much he  
8 thinks he is going to need to buy us time to get  
9 us to our mediation or to trial, I certainly will  
10 be reasonable with that.

11 THE COURT: Okay. Let me tell  
12 y'all, none of this is pleasant.

13 MR. MILLER: I know that you are  
14 about to -- I hate to do this. My client really  
15 doesn't prefer that I tell you this, but the  
16 timing is especially difficult for him to deal  
17 with because he has several -- he has several  
18 mental issues. He has anxiety and depression  
19 disorders that make this a very crippling task to  
20 handle: Gathering personal things, getting a job  
21 set up, trying to land somewhere.

22 There's no family or friends in town  
23 willing to give him a place to stay in the very  
24 near term, and so if the court can be generous and  
25 give him as much time as you can possibly see, I



1 would appreciate that. My client would. That  
2 seems to be justice. In this case we're about 90  
3 days since bankruptcy. It sounds like we have  
4 another -- is it an additional 90?

5 MS. STORY: Ninety. I would say 90  
6 to 120.

7 MR. MILLER: So if we can have  
8 something approaching the 60- to 75-day range,  
9 that would still put us within that window. We  
10 can still proceed with the bankruptcy unimpeded.  
11 My client would have the best fighting chance to  
12 land on his feet.

13 THE COURT: Right.

14 MS. STORY: Here's my comments about  
15 that. I know that his father has a summer home in  
16 Tennessee. His mother has been giving him money.  
17 He has a place to live, albeit in Michigan, but  
18 they don't have -- we would -- if he vacated the  
19 property we could meet with the auctioneer out  
20 there and take care of that.

21 He doesn't have -- I mean, if he  
22 just wants to vacate and go, get the tenants out,  
23 we'll meet with the auctioneer and take care of  
24 the auction. My client has mental health issues  
25 too and physical debilitating issues, and she's

1       trying to work, but we have to do what we have to  
2       do, and that's the quickest we can get money in  
3       his pocket and give us some relief.

4               THE COURT: All right. I'm going to  
5       go ahead and rule. I respect and appreciate the  
6       argument of both counsel, and you are very good at  
7       this. You are very articulate. You are very  
8       calm. You are very -- you understand what it  
9       means to sit down with a lawyer and try to talk  
10      things out, but still represent your client's  
11      interests.

12              I can tell, so it's nice to see  
13      someone who knows what they're doing.

14              MR. MILLER: I appreciate that,  
15      Judge. Thank you.

16              THE COURT: I mean that, I really  
17      mean that. You are very calm and articulate. You  
18      know what you're doing. I respect your approach.  
19      I really do. Did you know Bruce Moore, or do you  
20      know him?

21              MR. MILLER: I think I've maybe met  
22      him in passing.

23              THE COURT: Well, he's one of my  
24      lifelong friends. He's been with HCA forever.  
25      He is a great guy. I don't mean that in a bad



1 way. I just kid my buddy. But anyway, he is a  
2 great guy. If you are ever back over there, get  
3 to meet him because he is a good man.

4 MR. MILLER: Will do, your Honor.  
5 Thank you. I appreciate those comments.

6 THE COURT: You are very welcome.  
7 I don't have a magic wand here. I wish I did  
8 where I could please everyone, but I can't. We  
9 all know that in these types of cases it is very  
10 difficult, but we got to move. I understand the  
11 exigencies of the issues here. I understand the  
12 time limitations of the path through bankruptcy,  
13 et cetera.

14 I understand that there's a  
15 potential lawsuit that may come down the road.  
16 I understand this is the biggest asset, and you  
17 can try to get the highest and best dollar, all  
18 kinds of different elements that go into making  
19 a decision, so this is what I would like to do.

20 The home will be sold at auction in  
21 45 days. Y'all will discuss and try to agree upon  
22 an auctioneer. Obviously, you two good lawyers,  
23 three lawyers, will do whatever is necessary to  
24 obtain the services of a good auctioneer who will  
25 market the sale in a marketable fashion that will

1 not invite a desperation offer.

2 Both sides will follow the  
3 directives of the auctioneer or their agent with  
4 regard to visiting the interior of the home to  
5 determine a fair range of auction sale, sale  
6 price and to review, look at and tag personal  
7 items, if necessary, for sale.

8 Both parties through their  
9 attorneys will give the auctioneer their  
10 absolute, full cooperation even though it is  
11 difficult, but that must be done. Once the  
12 auction has been completed. the proceeds, netted  
13 proceeds of the auction after expenses and  
14 commissions are paid as a result of the auction  
15 will be placed in the -- are we Chancery or  
16 Circuit?

17 MS. STORY: Chancery.

18 THE COURT: In the Chancery Court  
19 clerk's office in an interest-bearing account in  
20 both parties' names. How do we do that now? Do  
21 y'all put it in your name now? However it's  
22 done.

23 MS. STORY: I think it might be in  
24 Ms. Beeler's name.

25 THE COURT: I think it is.

1 MS. STORY: On behalf of.

2 THE COURT: Right, exactly, bnf or  
3 on behalf of. If moneys are needed after the  
4 moneys are deposited I will definitely entertain  
5 a request for withdrawal of either side's  
6 equitable interest in those moneys from the  
7 clerk's office. That will have to be done either  
8 by agreement of the parties or a court hearing.

9 It will be a straight auction  
10 without reserve, and I believe that's it. Let  
11 me ask this question. I really don't believe,  
12 now that the husband is represented by excellent  
13 counsel, that we're going to have any problems  
14 with the husband trying to stall the auction or  
15 interfere directly or indirectly in any way.

16 Is there a restraining order against  
17 him at this point in that regard?

18 MS. STORY: There's just the  
19 standard restraining order that went down, the  
20 statutory from harassing, threatening or  
21 intimidating or dissipating marital -- dissipating  
22 assets or encumbering. Then the ex parte from  
23 contact so there's nothing to prevent him from  
24 stalling the sale of the house.

25 THE COURT: What do you say about

1       that, Ms. Story?

2                       MS. STORY:   Well, I would like it in  
3       there.

4                       THE COURT:   I know you would.   I'm  
5       going to put it in there because I want this sale  
6       to go off.   I've made a decision about how to do  
7       it, when we're going to do it, and I want to make  
8       sure because of the immediacy of this issue, that  
9       it gets done without any interference, and I  
10      believe that the husband will cooperate and will  
11      be a gentleman even though it's all difficult.

12                      He will do whatever is necessary to  
13      get this asset sold and get the money into the  
14      clerk's office as quickly as possible so that he  
15      may share in some of the proceeds on an immediate  
16      basis if he feels that he needs to.

17                      So the husband will be enjoined and  
18      restrained from interfering in any form  
19      whatsoever directly or indirectly with a smooth  
20      transition and preparation of the home for  
21      auction.   Yeah.

22                      Do y'all need me to order when the  
23      tenants should vacate?   I will be glad to do it.

24                      MR. MILLER:   Will you repeat that,  
25      your Honor?

1 THE COURT: Sir?

2 MR. MILLER: Would you repeat that,  
3 please.

4 THE COURT: Would y'all like for me  
5 to put in the order when the tenants should  
6 vacate, or should that be done I guess more  
7 efficiently through discussions with the  
8 auctioneer and how they want to proceed?

9 MS. STORY: That escape clause that  
10 I read says whether by volunteer or by court  
11 order. I think it would help him if it's by court  
12 order.

13 MR. MILLER: So my thought is when  
14 would the buyer take possession after -- if it's  
15 taking place in 45 days, does that mean they take  
16 possession --

17 THE COURT: Well, this is what I'm  
18 trying to avoid. I know the auctioneer, in order  
19 to get the highest and best price, is going to  
20 want to go in and take a look at it, the  
21 interior. He may want to tag items. I don't know  
22 who the tenant is. I don't know what the inside  
23 of it looks like.

24 I just don't want people bumping  
25 into each other, running over each other when



1 we're trying to get this property sold through  
2 auction, so I'm thinking we need to give the  
3 tenant a drop-dead deadline to be out, something  
4 that's reasonable.

5 If we're going to auction in 45  
6 days, everybody is going to have to be pressed  
7 against the wall because of circumstances that  
8 have come up in this divorce case. I'm thinking  
9 he needs to be out of there in ten days so we  
10 don't have that to worry about.

11 MR. MILLER: One thing is I believe  
12 Mr. Fenton has already been paid by these tenants  
13 for the month of August.

14 THE COURT: Okay. You will have to  
15 reimburse them.

16 MR. MILLER: That is probably not on  
17 hand because that goes toward his living expenses  
18 at the moment.

19 THE COURT: I didn't hear you. I'm  
20 sorry.

21 MR. MILLER: The amount required  
22 for reimbursement is not on hand because that  
23 goes to his living expenses, so if we could put  
24 their leave date at the very end of the month  
25 so that he doesn't owe any further



1 reimbursement.

2 THE COURT: At the end of this  
3 month?

4 MR. MILLER: At the end of August.

5 THE COURT: Today is August 1st.

6 MR. MILLER: Right.

7 THE COURT: What do you say, Ms.  
8 Story?

9 MR. MILLER: Are you saying that  
10 they need to move out ten days from today or ten  
11 days after the auction? You're saying from  
12 today?

13 THE COURT: Well, y'all tell me.  
14 What I'm trying to do is to prevent unexpected  
15 problems and issues that come up. Again there's  
16 so many things I don't know and y'all don't know,  
17 but the last thing I want to do is have an  
18 auctioneer coming in there and tripping all over  
19 the tenant and the tenant getting --

20 I mean I don't know anything that's  
21 going to happen. I just want that to be a  
22 non-issue, so if the tenant is out of there it is  
23 a non-issue. Any reimbursement, we'll have to  
24 deal with that, but it's going to have to be paid  
25 back to keep him happy. He may not be happy at

1 all. Again I can't solve all the problems, but,  
2 you know, we're just going to have to move through  
3 here with what's necessary.

4 MR. MILLER: Since we are --

5 MS. STORY: I think she is okay  
6 with letting him stay until August 30th if he  
7 gives them notice today, because that way, 15  
8 days to find the auctioneer for us to get that  
9 started. Then the auctioneer is going to  
10 advertise.

11 THE COURT: Okay.

12 MS. STORY: Then tell Mr. Fenton  
13 what he needs to get out of the house I'm sure, so  
14 I think we would be okay with August 30th.

15 MR. MILLER: She just made my next  
16 point. I appreciate that.

17 THE COURT: Good deal. Okay.  
18 Anything else that we need to talk about?

19 MR. MILLER: The only question I  
20 would have is about personal property between  
21 the two of them. Wanting to know if Mrs. Fenton  
22 has anything in particular we should be aware of?

23 MS. STORY: There's a couple of  
24 things. We'll make a list.

25 MR. MILLER: We don't want any

1 further headache about stuff like that.

2 THE COURT: I respect that. Thank  
3 you. Let's do this. Are y'all going to make a --  
4 you've already --

5 MS. STORY: There's a few little  
6 things she wants. We'll make a list.

7 THE COURT: Okay, good enough.

8 MS. STORY: I can do that.

9 THE COURT: If you will put that in  
10 the order as well. Do you want a deadline for her  
11 to get that list of property out of the home?  
12 Y'all are doing really well.

13 MR. MILLER: A couple of days, ten  
14 days?

15 MS. STORY: Ten days.

16 THE COURT: That will work. I think  
17 we covered it all.

18 MR. MILLER: Thank you, your Honor.

19 THE COURT: Is that it? Very good.  
20 Can I get both of you to sign off on that order,  
21 please, and I'll sign it whenever it's prepared.  
22 I believe that's it. Any other questions?

23 MS. STORY: No, your Honor.

24 THE COURT: Very good. Thank y'all  
25 very much. It's good to see y'all.

1 MS. STORY: We're off the record?

2 THE COURT: Yes.

3 (Whereupon, this was all that was  
4 heard in this cause, this the 1st day of August,  
5 2019.)  
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9 I further certify that I am not  
10 related to nor an employee of counsel or any of  
11 the parties to the action, nor am I in any way  
12 financially interested in the outcome of this  
13 case.

19  
20  
21  
22

*Susan Murillo*  
-----  
Susan Murillo, LCR #224  
Expiration Date: 6-30-20  
118 Wheaton Hall Lane  
Franklin, Tennessee 37069

**IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE**

**FAWN [REDACTED] FENTON v. JEFFREY RYAN FENTON**

**Chancery Court for Williamson County  
No. 48419b  
COA NO. M2019-02059-COA-R3-CV**

**CERTIFICATE OF APPELLATE RECORD**

I, Elaine B. Beeler, Clerk and Master, Williamson County Chancery Court, Franklin, Tennessee, do hereby certify that the following items herewith transmitted to the Court of Appeals are original or true and correct copies of all or the designated papers on file in my office in the captioned case.

1. Technical record attached to this certificate consisting of 709 pages contained in five volumes.
2. One volume of transcripts filed in my office on February 18, 2020, and authenticated by the Trial Judge or automatically authenticated under T.R.A.P. Rule 24(f).

1 Volume - Hearing Date August 1, 2019

3. No exhibits are included in the record.
4. No sealed documents and/or exhibits are included in the record.
5. No depositions are included in the record.
6. No exhibits and/or documents of unusual bulk or weight have been retained in my office.



This the 31<sup>st</sup> day of March, 2020.



Sara B McKinney  
D.C.  
Elaine B. Beeler  
Clerk and Master  
Williamson County Chancery Court  
Franklin, Tennessee